

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of)
Policies and Rules Implementing)
The Telephone Disclosure and)
Dispute Resolution Act)

CC Docket No. 93-22

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NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

COMMENTS

AND

REQUEST FOR ACTION

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As evidenced by the attached resolution, though the FCC proposed rules do impose burdens on both common carriers and Information Providers, NARUC generally agrees that these burdens are outweighed by the need to protect subscribers from bills for services they neither sought nor received.

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In light of the increasing number of consumers affected by this problem, until a final rule is promulgated in this proceeding, the FCC should immediately issue an emergency order, which allows local exchange carriers to only bill for information service calls after the information service provider has certified that those calls were not originated by dialing an 800 number.

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NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
COMMENTS AND REQUEST FOR ACTION

Pursuant to Sections 1.41 and 1.45 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. §§ 1.41 and 1.45 (1994), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits the following comments generally supporting the Commission's proposals to amend the rules announced in its August 31, 1994 released "ORDER ON RECONSIDERATION AND FURTHER NOTICE OF PROPOSED RULE MAKING" [FCC 94-200]. In addition, pending promulgation of a final rule in this rulemaking proceeding, NARUC respectfully requests the FCC issue an emergency order, which allows local exchange carriers to only bill for information service calls after the information provider has certified that those calls were not originated by dialing an 800 number or an other telephone number advertised or widely understood as being toll free.

In support of its comments and requests, NARUC states as follows:

I. BACKGROUND

This proceeding was initiated to implement the Telephone Disclosure and Dispute Resolution Act ("TDDRA").¹ The TDDRA charged the FCC and the Federal Trade Commission with adopting new rules to implement statutory requirements governing the provision of interstate pay-per-call and related services.

On July 15, 1993, the FCC adopted an order² amending its pay-per-call regulations consistent with the statutory mandate. Four parties filed for reconsideration of these rules. NARUC has been actively involved in the policy formation of the audiotext rules both before Congress and at the FCC - acting on no less than four separate resolutions urging Congressional and FCC action. See, NARUC's **Resolution on Audiotext Services** (February 27, 1991) NARUC Bulletin No. 9-1991 at page 4 (March 4, 1991), **Resolution on Billing and Collection Abuses**, (February 27, 1991) NARUC Bulletin No. 9-1991 at page 17 (March 4, 1991), **Resolution On 900 Pay Per Call Service**, (July 24, 1991) Reported NARUC Bulletin No. 31-1991, pages 9-11 (August 12, 1991), and **Resolution on Pay Per Call Rules Clarification and Modification** (July 26, 1992). Much of the policy suggested in our resolutions was incorporated into both the TDDRA and the FCC's existing rules.

¹ The TDDRA added § 228 to the Communications Act of 1934, Pub.L.No. 192-556, 106 Stat. 4181 (1992) (codified at 47 USC § 228).

² Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, 8 FCC Rcd 6885 (1993) ("Report and Order").

Section 64.154 of the FCC's July 1993 rules, among other things, prohibits the use of telephone numbers beginning with an 800 access code from being used in a manner which charge the calling party for the information conveyed during the call unless the calling party has a presubscription or comparable billing agreement.

However, since July of 1993, many State commissions have received complaints which indicate that customers make 1-800 calls and give a previously supplied Personal Identification Number (PIN) without understanding that charges will be made for the call. It appears that some automatic number identification ("ANI") information has been used by information providers to summarily establish presubscription agreements to bill calls made using an 800 code to the line number provided by the ANI without either the fully informed consent or authorization of the subscriber to that line. Some of the billings resulting from the alleged presubscription agreements have resulted in substantial charges being made to the originating line, which in some cases includes customer owned pay telephones, without the authorization of the subscriber to that line.

These Information Provider presubscription procedures, which use ANI information as a basis for billing, seemed to be used in a manner which circumvents disclosure and blocking requirements provided in the FCC's 1-900 rules (47 C.F.R. §64.1501-1515).

In response to this growing problem, on July 27, 1994, at its Summer Meeting in San Diego, NARUC adopted another pay-per-call resolution which (a) urges the FCC to make permanent changes to its rules to address these abuses and (b) requires NARUC's counsel to ask the FCC to, during the pendency of the proposed permanent rule changes, issue an emergency order to curb ongoing abuses. According to the resolution, the order should not allow local exchange carriers to bill for information service calls unless the information provider has certified that those calls were not originated by dialing an 800 number or an other telephone number advertised or widely understood as being toll free. A copy of the July 1994 resolution is attached as Appendix A.

However, on August 2, 1994, less than a week after NARUC's resolution was adopted, the FCC announced adoption of the "ORDER ON RECONSIDERATION AND FURTHER NOTICE OF PROPOSED RULE MAKING" that is the subject of these comments. The August Order rejects the four requests for reconsideration. In addition, in response to increasing numbers of complaints from telephone customers who contend that they are being charged by information providers for calls they didn't make or thought were free, the Commission proposed strengthening its regulations to help ensure that consumers are billed only for information services that they want and have agreed to pay for. This proposed rule addresses the problems identified in NARUC's July Resolution. The FCC issued the full text of its order August 31, 1994.

II. COMMENTS SUPPORTING THE PROPOSED RULEMAKING

As evidenced by the attached resolution, though the FCC proposed rules do impose burdens on both common carriers and Information Providers, NARUC generally agrees that these burdens are outweighed by the need to protect subscribers from bills for services they neither sought nor received.

In the August proposed rulemaking, the FCC has suggested (a) prohibiting the use of 800 numbers to connect callers to any information service that is not provided under a presubscription or comparable arrangement, and (b) requiring that presubscription arrangements be established in writing and that common carriers obtain evidence of the written agreement before issuing a telephone bill that contains charges for pre-subscribed information services. Under these proposed rules, the pay-per-call telephone bill could be addressed only to the individual who actually entered into the presubscription arrangement, not to the person or company whose telephone was used to place the call. The Commission also proposed to state in the rules that a presubscription agreement may be established only with a legally competent individual.

In addition, the Commission proposed requiring carriers performing billing services for Information Providers to separate charges for presubscribed information services from charges for other services and to display for each information service charge: (1) the type of service and the provider's name and telephone number; (2) the number actually called; (3) the amount of the charge; (4) the date and time of the call, and (5) for calls billed on a time-sensitive basis, the duration of the call.

The Commission stated that while these proposals would impose some new burdens on both common carriers and Information Providers, whether or not they have engaged in abuses involving 800 number information services, these burdens are outweighed by the need to protect subscribers from bills for services they neither sought nor received.

As indicated by the attached resolution, NARUC generally agrees. In view of the large numbers of complaints being received at both the federal and state commissions, it's clear the current rules need to be strengthened. Indeed, the FCC's proposal is almost precisely what NARUC recommends in our July resolution.

Specifically, that resolution suggests that the Commission's rules be changed to "...prohibit information service providers from using any ANI provided information (or other calling line number information) as the basis for billing for any non-900 number or any other advertised or widely understood as being toll free information service calls or as the basis for establishing any presubscription agreement unless the subscriber to the originating line has specifically authorized, in writing, the use of that number for billing purposes."

III. REQUEST FOR EMERGENCY ACTION

In light of the increasing number of consumers affected by this problem, until a final rule issues in this proceeding, the FCC should immediately issue an emergency order, which allows local exchange carriers to only bill for information service calls after the information service provider has certified that those calls were not originated by dialing an 800 number.

As both this proposed rulemaking suggests, and, and an earlier FCC June 22, 1994 letter attests, this is a "serious and growing problem".³ In that letter the FCC concludes that presubscription allowing the billing for 1-800 initiated calls can be established only when the calling party agrees to pay for the call and is not established when a party other than the caller is billed for the service as may be the case when ANI is used for billing purposes.

Nevertheless subscribers to lines are being billed for these calls and those subscribers may not know that the billings for those calls are not valid or binding and, therefore, those customers may be paying charges for calls which they do not owe,

Indeed, during the period from January 1, 1994 through June 30, 1994, the FCC's own Informal Complaints and Public Inquiries Branch received 2003 written complaints regarding 800 number information services. Many of these complaints assert that children have unrestricted access to adult-oriented programs.

³ Letter from Gregory A. Weiss, Acting Chief, Enforcement Division, Common Carrier Bureau to Randal R. Collett, Executive Vice President, Association of College and University Telecommunications Administrators, 9 FCC Rcd 2819 (1994).

Moreover, even where subscribers owners are aware of the problem, there may be no viable solution. For example, 800 number blocking, even if desirable, is not available to certain subscribers. Call aggregators, such as hotels and payphone owners, must maintain 800 number access to comply with the FCC's rules governing operator service providers -- i.e., they may not lawfully block their equipment.

Accordingly, in light of the obvious abuses that continue to occur, until a final rule can be promulgated in this proceeding, NARUC respectfully requests that the FCC issue an emergency order, which allows local exchange carriers to only bill for information service calls after the information service provider has certified that those calls were not originated by dialing an 800 number or an other telephone number advertised or widely understood as being toll free.

IV. CONCLUSION

NARUC generally supports and applauds the FCC's efforts to eliminate consumer confusion the provision of 800-based pay-per-call services. However, to forestall continued abuses during the pendency of this rulemaking proceeding, NARUC respectfully requests that the FCC issue the proposed emergency order.

Respectfully submitted,



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October 11, 1994

APPENDIX A

NARUC'S

JULY 27, 1994

**RESOLUTION REGARDING INFORMATION SERVICE
CALLS MADE USING AN 800 NUMBER**

**Resolution Regarding Information Service
Calls Made Using An 800 Number**

WHEREAS, On August 13, 1993 the Federal Communications Commission ("FCC" or "Commission") issued policies and rules for implementing the Telephone Disclosure and Dispute Resolution Act (47 U.S.C. §228); and

WHEREAS, §64.154 of those rules, among other things, prohibits the use of telephone numbers beginning with an 800 access code from being used in a manner which charge the calling party for the information conveyed during the call unless the calling party has a presubscription or comparable billing agreement; and

WHEREAS, Numerous State commissions have received complaints which indicate that customers make 1-800 calls and give a previously supplied Personal Identification Number (PIN) without understanding that charges will be made for the call; and

WHEREAS, Some automatic number identification (ANI) information has been used by information service providers to summarily establish presubscription agreements to bill calls made using an 800 code to the line number provided by the ANI without either the fully informed consent or authorization of the subscriber to that line; and

WHEREAS, Some of the billings resulting from the alleged presubscription agreements have resulted in substantial charges being made to the originating line, which in some cases includes customer owned pay telephones, without the authorization of the subscriber to that line; and

WHEREAS, The presubscription procedure which uses ANI information as a basis for billing appears to be used in a manner which circumvents disclosure and blocking requirements provided in the FCC's 1-900 rules (47 C.F.R. §64.1501-1515); and

WHEREAS, A letter released by the FCC on June 22, 1994 in response to correspondence regarding the 800 number presubscription problem indicates that the FCC is aware of this "serious and growing problem"; and

WHEREAS, In that letter the FCC concludes that presubscription allowing the billing for 1-800 initiated calls can be established only when the calling party agrees to pay for the call and is not established when a party other than the caller is billed for the service as may be the case when ANI is used for billing purposes; and

WHEREAS, Nevertheless subscribers to lines are being billed for these calls and those subscribers may not know that the billings

for those calls are not valid or binding and, therefore, those customers may be paying charges for calls which they do not owe; and

WHEREAS, These problems can be remedied in the long run by a change in the Commission's rules which would prohibit information service providers from using any ANI provided information (or other calling line number information) as the basis for billing for any non-900 number or any other advertised or widely understood as being toll free information service calls or as the basis for establishing any presubscription agreement unless the subscriber to the originating line has specifically authorized, in writing, the use of that number for billing purposes; and

WHEREAS, The immediate relief that is necessary to protect consumers can be provided by having the FCC issue an emergency order, which allows local exchange carriers to only bill for information service calls after the information service provider has certified that those calls were not originated by dialing an 800 number or an other telephone number advertised or widely understood as being toll free, until the final rule is promulgated; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1994 Summer Meetings in San Diego, California, supports an emergency petition and a rule change or modification which would resolve the problems identified in the resolution; and be it further

RESOLVED, That the NARUC General Counsel shall take whatever action is necessary, in the appropriate forum, to carry out the objective of this resolution.

Sponsored by the Committee on Communications
Adopted July 27, 1994

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CC Docket No. 93-22

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing
was sent by first class United States mail, postage prepaid, to
all parties on the attached Service List.



James Bradford Ramsay
Deputy Assistant General Counsel

National Association of
Regulatory Utility Commissioners